IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Crl.Rev.Pet.No. 4460 of 2007()

CRA.533/2002 of ADDL.SESSIONS COURT (ADHOC)-III, THALASSERY
STC.5239/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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REVN. PETITIONER/APPELLANT/ACCUSED:

K. MOHANAN,
S/O. KANNAN, AGED 37 YEARS,
KANCHINAMKANDI HOUSE,
PALLIKUNNU AMSOM,
PANNENPARA,
KANNUR.

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENTS/SATE:

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL.R.P. NO. 4460 of 2007

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Dated this the 13th day of December, 2007.

ORDER

The petitioner stand convicted concurrently by the courts below for an offence punishable under Section 51(a) of the Kerala Police Act and sentenced to imprisonment for 15 days and to pay a fine of Rs.50 being the mandatory minimum.

2. The case of the prosecution as proved by the oral and documentary evidence is as follows:

On 19.09.2001 at about 5.40 p.m. the revision petitioner was found by the Head Constable of Police, Kannur Town Police Station, near Sangeetha Talkies, Kannur under the influence of the alcohol and unable to take care of himself and behaving in a disorderly manner.

3. The credible evidence of PW1, the Head Constable coupled with Ext.P1 drunkenness certificate clearly establishes the offence alleged against the revision petitioner. His conviction was confirmed in appeal by the lower appellate court. This court sitting in revision will be loath to interfere with the said conviction which is accordingly confirmed.

4. What now survives for consideration is the question as to the legality or otherwise of the sentence imposed on the revision petitioner. Even though what has been awarded to the revision petitioner is only the mandatory minimum, the medical records produced by the petitioner shows that he is a cardiac patient who has to undergo a permanent pacemaker implantation and an open heart surgery at Sri Jayadeva Institute of Cardiology, Bangalore. Under these circumstances, I am inclined to invoke proviso to Section 61(a). The sentence imposed on the revision petitioner is accordingly set aside and instead, he is sentenced to imprisonment till the rising of the court and to pay a fine of Rs.200/- and on default to pay the fine, to suffer simple imprisonment for 15 days. The fine amount shall be deposited before the trial court within one month from today failing which he shall suffer the default sentence. The revision petitioner shall appear before the trial court on **15.01.2008** to receive sentence.

The revision is disposed of accordingly.

V. RAMKUMAR, JUDGE.

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